

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FRANCISCO SOTO,

Plaintiff,

vs.

R. GINES, RN, et al.,

Defendants.

CASE NO. 11-CV-235-LAB (JMA)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

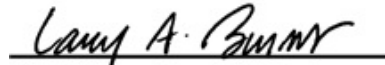
Soto initiated this action on February 3, 2011, and pursuant to 28 U.S.C. § 636(b) and Civil Local Rules 72.1(c) and (d) it was referred to Magistrate Judge Jan Adler for a Report and Recommendation ("R&R"). Now pending before the Court is Defendants' motion to dismiss. Judge Adler issued his R&R on the motion on January 30, 2012. Objections were due on February 21, 2012, and the Court has not received any. The Court therefore **ADOPTS** the R&R in its entirety. See Fed. R. Civ. P. 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (district judge "must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise").

First, Defendants' motion to dismiss Soto's complaint for failure to exhaust administrative remedies is **DENIED**. The Court agrees with the R&R's conclusion that

1 “Defendants have not conclusively established that Plaintiff cannot be excused from  
2 his obligation to exhaust administrative remedies.” (R&R at 7.) Second, Defendants’  
3 motion to dismiss Soto’s negligence claim is **DENIED AS MOOT**; that claim is not  
4 included in Soto’s First Amended Complaint. Third, Defendant Stout is **DISMISSED**  
5 from this case. Fourth, Soto must show cause, within three weeks of the date this  
6 Order is entered, why Defendant White should not be dismissed for failure to serve  
7 him in a timely manner. See Fed. R. Civ. P. 4(m).

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9 **IT IS SO ORDERED.**

10 DATED: February 23, 2012

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12 **HONORABLE LARRY ALAN BURNS**  
13 United States District Judge  
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